## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

DAWN L. MILLSAP	)
Plaintiff,	)
	) Case No.
v.	) (Farmer la Na GCGC 205020 in the
INTERNAL REVENUE SERVICE	<ul><li>(Formerly No. SCSC 205929 in the</li><li>Iowa District Court for Linn County</li></ul>
	) Small Claims Division)
Defendant.	)
	)
	)
	)

## NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

The United States of America ("United States"), improperly named as the Internal Revenue Service, removes the above-captioned action to this Court under 28 U.S.C. § 1442(a)(1) and gives notice that it is removing this action to this Court as required by 28 U.S.C. §1446(a), (d).

On September 3, 2013, Plaintiff Dawn L. Millsap¹ ("Millsap") filed a petition in the Iowa District Court in Linn County, Small Claims Division. Millsap v. IRS, SCSC 205925. Millsap apparently seeks \$300,either as a tax refund or as damages from the IRS. Although Millsap named the Internal Revenue Service as the defendant, the proper defendant is the United States because the IRS lacks the capacity to sue or be sued. *See Freck v. IRS*, 37 F.3d 986, 988 n.1 (3d Cir. 1994); *Devries v. IRS*, 359 F.Supp. 2d 988, (E.D. Cal. 2005) (citations omitted.)

The United States may remove to district court any state-court action in which the United States is named as a defendant, 28 U.S.C. § 1442(a)(1). As required by 28 U.S.C. § 1446(a), the

<sup>&</sup>lt;sup>1</sup>Although Magistrate Judge Machacek's Order identifies the Plaintiff as Dawn Millsop, Plaintiff's handwritten petition, indicates that her name is properly spelled "Millsap."

United States has attached copies of all documents delivered to the United States with Millsap's

pleading. The United States will serve Millsap by mail with a copy of this notice, and will also file

a copy of this notice in the Iowa District Court in Linn County, as required by 28 U.S.C. § 1446(d).

Furthermore, in accordance with N.D. Iowa Local Rule 81(a), the United States has attached (1)

copies of all process, pleadings, and orders filed in the state case, and (2) a list of all matters pending

in the state court that will require resolution by this Court.

WHEREFORE, the United States requests that this action be entered upon the docket of

this Court in accordance with Rule 81(c) of the Federal Rules of Civil Procedure.

Dated: September 20, 2013

Respectfully submitted,

SEAN R. BERRY

**United States Attorney** 

KATHRYN KENEALLY

**Assistant Attorney General** 

/s/ Miranda Bureau

MIRANDA BUREAU

Trial Attorney, Tax Division

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2

## **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing Notice of Removal, and all attachments, has been made upon the following by depositing a copy in the United States mail, postage prepaid, this 20th day of September, 2013.

Dawn L. Millsap 1210 Auburn Drive SW Apt N6 Cedar Rapids, IA 52404

/s/ Miranda Bureau

MIRANDA BUREAU
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